

(C.R.)

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

&

THE HONOURABLE MR. JUSTICE T.R.RAVI

MONDAY, THE 15TH DAY OF FEBRUARY 2021 / 26TH MAGHA, 1942

WA.No.1350 OF 2020

AGAINST THE JUDGMENT IN WP(C) 15529/2020(M) OF HIGH COURT OF
KERALA DATED 17.09.2020

APPELLANTS/PETITIONERS:

- 1 DR. AJI RAJ,
AGED 38 YEARS, S/O. A. RAJAN PILLAI,
WORKING AS VETERINARY OFFICER,
P AND I OFFICE, TRCMPU LTD., KUTTIYIL JN.
(), MANNAR P.O, ALAPPUZHA DISTRICT-689622,
RESIDING AT PANAMPALLIL HOUSE,
PATHIYOOR EAST P.O (VIA),
KEERIKADU, ALAPPUZHA DIST. -690508
- 2 DR. ANITHA RAM,
AGED 38 YEARS, W/O. SANEESH KUMAR,
WORKING AS VETERINARY OFFICER,
TRCMPU LTD., KOLLAM DIARY,
THEVALLY P.O, KOLLAM-691 009,
RESIDING AT VRINDAVAN, THEKKEMURI,
EAST KALLADA, KOLLAM DISTRICT-691 502
- 3 DR. GIREESH KRISHNAN,
AGED 36 YEARS, S/O. C.N. GOPALAKRISHNAN NAIR,
WORKING AS VETERINARY OFFICER, TRCMPU LTD.,
PATHANAMTHITTA DAIRY, NARIYAPURAM P.O,
PATHANAMTHITTA-689513,
RESIDING AT KOTTARATHUNKAL HOUSE,
KALLOORKULAM P.O, EDAMULA,
KOTTAYAM-686 503

BY ADVS.

SRI.SAJITH KUMAR V.

SHRI.VIVEK A.V.

SHRI.GODWIN JOSEPH

SMT.APARNA CHANDRAN

RESPONDENTS/RESPONDENTS :

- 1 MANAGING DIRECTOR, ,
 THIRUVANANTHAPURAM REGIONAL CO-OPERATIVE MILK
 PRODUCERS UNION LTD. HEAD OFFICE,
 KSHEERA BHAVAN, PATTOM P.O,
 THIRUVANANTHAPURAM DISTRICT-695 004 .

- 2 THIRUVANANTHAPURAM REGIONAL CO-OPERATIVE MILK
 PRODUCERS UNION LTD.
 REPRESENTED BY ITS MANAGING DIRECTOR,
 KSHEERA BHAVAN, PATTOM P.O,
 THIRUVANANTHAPURAM DISTRICT-695004

- 3 KERALA CO-OPERATIVE MILK MARKETING FEDERATION LTD. ,
 REPRESENTED BY ITS MANAGING DIRECTOR,
 MILMA BHAVAN, PATTOM PALACE P.O,
 THIRUVANANTHAPURAM-695004 .

- 4 DIRECTOR,
 DAIRY DEVELOPMENT DEPARTMENT,
 GOVERNMENT OF KERALA, PATTOM P.O,
 THIRUVANANTHAPURAM-695 004 .

- 5 STATE OF KERALA,
 REPRESENTED BY THE SECRETARY TO THE GOVERNMENT,
 ANIMAL HUSBANDRY AND DAIRY DEVELOPMENT DEPARTMENT,
 GOVERNMENT OF KERALA, SECRETARIAT,
 THIRUVANANTHAPURAM DISTRICT-695 001

- 6 SHRI. E.R. SANTHOSH KUMAR,
 ASSISTANT MANAGER (P & I) , TRCMPU LTD.
 KSHEERA BHAVAN, PATTOM P.O,
 THIRUVANANTHAPURAM-695 004

R1 & R2 BY SMT.LATHA ANAND,
R4 & R5 BY SRI.B.VINOD, SR. GOVT. PLEADER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
15.02.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

(C.R.)

ALEXANDER THOMAS & T.R.RAVI, JJ.

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W. A. No.1350 of 2020

*[Arising out of judgment dated 17.09.2020
in W.P.(C).No.15529 of 2020]*

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Dated this the 15th day of February, 2021

JUDGMENT

ALEXANDER THOMAS, J.

The aforecaptioned Writ Appeal has been filed under Section 5(i) of the Kerala High Court Act by the petitioners in W.P.(C) No.15529/2020 so as to impugn the judgment dated 17.09.2020 rendered by the learned Single Judge of this Court in the said WP(C) relegating the petitioners to seek efficacious alternate remedy available under Section 69(2)(d) of the Kerala Co-operative Societies Act, 1969 and the Rules framed thereunder.

2. Heard Sri.V.Sajith Kumar, learned counsel appearing for the appellants/petitioners in the O.P., Smt.Latha Anand, learned standing counsel for the Kerala Co-operative Milk Marketing Federation Ltd. (MILMA) appearing for respondents 1 to 3 and Sri.B.Vinod, learned Senior Government Pleader appearing for R4 and R5. In the nature of the orders

proposed to be passed by this Court in this appeal, notice to contesting respondent No.6 will stand dispensed with.

3. The appellants had filed the above Writ Petition (Civil) seeking direction to respondents 1 to 3 to effect promotions to the appellants as Assistant Manager (P&I) in preference to contesting respondent No.6 without any consequential benefits and also for a direction so as to order that the said respondents will refrain from regularising promotions overlooking the claims of the petitioners.

4. The learned Single Judge has passed the impugned judgment on 17.09.2020 in the said Writ Petition (Civil) ordering that since the petitioners have got an alternative efficacious statutory remedy in terms of Section 69(2)(d) of the Kerala Co-operative Societies Act, 1969, they are entitled to approach the Co-operative Arbitration Court to adjudicate on any dispute in connection with the employment of Officers and Servants of different classes of societies as mentioned in Section 80(1) of the said Act including their promotion and *inter se* seniority.

5. The learned Single Judge has also noted that Section 69 of the said Act also excludes the jurisdiction of any Court or authority to deal with a dispute as is referred in that provision. The appellants have argued

before the learned Single Judge as well as before us that their prime contention is that the 3rd respondent Kerala Co-operative Milk Marketing Federation Ltd. (MILMA) is 'an other authority' which would come within the scope and ambit of the definition of "State" as per Article 12 of the Constitution of India and that writ remedy could be invoked by them etc. The learned Single Judge as per the impugned judgment has held that in view of the availability of alternate efficacious statutory remedy, it is for the petitioners to avail the said remedy and even if it is assumed that the respondent body fulfills the definition of "State" as per Article 12 of the Constitution of India, no exceptional circumstances exist so as to warrant interference by resorting to the extraordinary constitutional remedy under Article 226 of the Constitution of India and that at any rate writ proceedings in respect of service matters of the Co-operative Societies, like respondents 1 to 3, need not be entertained by this Court in the proceedings under Article 226 of the Constitution of India.

6. Per contra, Smt.Latha Anand, learned standing counsel appearing for respondents 1 to 3 would point out that a Larger Bench of this Court in the decision in **Association of Officers' Ksheera Bhavan & Anr. V. State of Kerala & Ors.** [2015 (2) KLJ 410] has held that writ

proceedings under Article 226 of the Constitution of India may lie against the Co-operative Society only if there is patent and flagrant violation of the Statutory Rules governing the field, etc.

7. In that regard, it is submitted by Sri. V.Sajith Kumar, learned counsel appearing for the appellants that the Full Bench decision in **Association of Officers' Ksheera Bhavan & Anr. V. State of Kerala & Ors.** [2015 (2) KLJ 410](supra) has left open the issue as to whether or not MILMA would fulfil the definition of "State" under Article 12 of the Constitution of India.

8. When the matter had come up for consideration on 29.01.2021, counsel for the appellants had made a submission that the said remedy to approach the Co-operative Arbitration Court may not be an efficacious remedy as there are very many limitations on the functioning of the said Arbitration Court in view of the Covid 19 pandemic issues, etc. Thereupon we have issued an order on 29.01.2021 directing the Registry to get a report from the Co-operative Arbitration Court, Thiruvananthapuram constituted under Section 69 of the Kerala Co-operative Societies Act, as to the details of its functioning and whether it is solely in Thiruvananthapuram and whether additional Benches are available in other parts of the State and

also the details of the pendency and disposal of the cases for the last two or three years and more particularly, the filing of new cases, pendency of cases and disposal of cases for the period from 01.04.2020 onwards.

9. Pursuant to the aforesaid directions issued by this Court on 29.01.2021, the Co-operative Arbitration Court, (Southern) Thiruvananthapuram Bench has furnished a report bearing No.CAC-9/2021 dated 08.02.2021, the operative portion of which reads as follows:

“..... As per Section 69 of Kerala Co-operative Societies Act 1969, the dispute is to be decided by Co-operative Arbitration Court and Registrar are well defined. Accordingly the Government of Kerala constituted Co-operative Arbitration Court to adjudicate all non-monitory disputes in Co-operative sector. At present there are two Co-operative Arbitration Courts are functioning, one at Southern division and other at Northern division. The jurisdiction of Southern Court has seven districts namely Thiruvananthapuram, Kollam, Pathanamthitta, Alappuzha, Kottayam, Idukki and Ernakulam having Head Quarter at Thiruvananthapuram and the cases of remaining seven districts are adjudicated by Northern division Court having Head Quarter at Kozhikode. The Southern division of the arbitration Court is having camp sitting at Alappuzha and Ernakulam. Normally Alappuzha camp sitting will be functioning two days per month and Ernakulam camp sitting will be functioning three days per month in addition to regular sitting at Thiruvananthapuram. Similarly the Northern division of the arbitration Court having camp sitting at Kannur, Palakkad and Thrissur in addition to regular sitting at Kozhikode. During 2019 the Southern Court disposed 101 cases and in December, 2019 there were 342 pending cases. During 2020 this Court disposed 62 cases and in December 2020 there were 364 pending cases. The Arbitration Court (Southern) got 90 new cases during 2019 and 64 new cases during 2020. 45 cases have been disposed by this Court from 01.04.2020 to 04.02.2021.”

10. After hearing both sides, we are broadly in agreement with the views rendered by the learned Single Judge in the impugned judgment in

the WP(C) and we are not persuaded by the counsel for the appellants that statutory remedy available to the writ petitioners under Section 69 of the Act is not efficacious. Hence without expressing any opinion on the primary contention of the appellants as to whether the abovesaid respondent body would fulfill the definition of the “State” as understood in Article 12 of the Constitution of India, it ordered that it is for the appellants to avail the statutory remedy by filing appropriate petition before the Co-operative Arbitration Court, Thiruvananthapuram. It appears that all the three appellants are based in the seven districts which would fall within the territorial jurisdiction of the Co-operative Arbitration Court, Southern, Thiruvananthapuram. If the requisite petition is filed by the appellants before the Co-operative Arbitration Court in terms of Section 69 of the Act without much delay, preferably within a period of 2 to 3 weeks from the date notified for receipt of a certified copy of this judgment, it is ordered in the interest of justice that the Co-operative Arbitration Court, Southern, Thiruvannthapuram will afford reasonable opportunity of being heard to both sides and then will finally dispose of the matter, without much delay, preferably within a period of four months, at any rate, within an outer time limit of five months from the date of production of a certified copy of this

judgment along with the requisite petition.

11. Sri.V.Sajith Kumar, learned counsel appearing for the appellants would point out that this Court may protect the interest of appellants so as to preserve the subject matter of the *lis* by ordering that respondents 1 to 3 herein may refrain from regularising promotions overlooking the claims of the petitioners.

12. After hearing both sides, we are of the considered view that the appellants can certainly file necessary Interlocutory Application along with the main matter to seek appropriate interim reliefs and interim direction from the Co-operative Arbitration Court and appellants may ensure that necessary Interlocutory Application is also filed along with the main application before the Co-operative Arbitration Court. If such Interlocutory Application is filed by the appellants along with the main application, the Co-operative Arbitration Court may pass orders thereon after hearing both sides without much delay, preferably within a period of six weeks from the date of filing of such Interlocutory Application. Until orders are passed by the Co-operative Arbitration Court on the said Interlocutory Application, it is ordered that *status quo* as on today with regard to the claims of the appellants for promotions may be maintained by respondents 1 to 3. It is

made clear that the above said interim order has been passed by this Court only to preserve the subject matter of the *lis* and shall not be construed as an expression of opinion on the part of this Court regarding the merits of the controversy which would fall exclusively within the domain and province of the Co-operative Arbitration Court. However, it is made clear that in case the appellants do not file the main application along with the Interlocutory Application before the Co-operative Arbitration Court within an outer time limit of three weeks from the date notified for receiving the certified copy of this judgment, then the abovesaid interim order to maintain *status quo* shall stand automatically vacated without any further orders from this Court.

13. The Registry will forward a copy of this judgment to the Co-operative Arbitration Court, Southern, Thiruvananthapuram for necessary information and further action. The learned standing counsel appearing for respondents 1 to 3 will immediately inform respondents 1 to 3 about the aforesaid directions issued by this Court. The Registry will forward a copy of this judgment to R6 for necessary information, at the cost of the appellants. The directions and orders passed by the learned Single Judge in the impugned judgment in 17.09.2020 in WP(C) No.15529/2020 will

stand modified to the limited extent as above.

With these observations and directions, the above Writ Appeal will stand finally disposed of.

Sd/-

ALEXANDER THOMAS, JUDGE

Sd/-

T.R.RAVI, JUDGE